Office Supreme Court, U. S.
FILED
MAY 15 1922
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. [illegible]330

IN THE MATTER OF ELMORE D. DIER, HARRY J. LAWRENCE, JR., LAWRENCE STARR, INDIVIDUALLY AND AS COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF E. D. DIER & CO., AND E. D. DIER & CO., APPELLANTS.

MOTION OF APPELLANTS TO ADVANCE CAUSE FOR ARGUMENT AND FOR THE CONTINUATION OF STAY GRANTED BY JUDGE LEARNED HAND PENDING DECISION.

NASH ROCKWOOD,
Of Counsel for Appellants.

527 5TH AVENUE, NEW YORK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 874.

IN THE MATTER OF ELMORE D. DIER, HARRY J. LAWRENCE, JR., LAWRENCE STARR, INDIVIDUALLY AND AS COPARTNERS, DOING BUSINESS UNDER THE FIRM NAME OF E. D. DIER & CO., AND E. D. DIER & CO., ALLEGED BANKRUPTS.

MOTION OF APPELLANTS TO ADVANCE CAUSE FOR ARGUMENT AND FOR THE CONTINUATION OF STAY GRANTED BY JUDGE LEARNED HAND PENDING DECISION.

SIRS:

Take notice that upon the affidavit of Nash Rockwood, verified the 11th day of May, 1922, and upon the record upon appeal herein, and upon all the papers and proceedings herein, application will be made to the Supreme Court of the United States, at the court-room, Washington, D. C.,

on Monday, May 15, 1922, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an order of the court advancing said cause upon the calendar of the court for argument at the present session of the court, and for such other and further relief as may be just.

Dated, May 11, 1922.

ROCKWOOD & LARK,
Attorneys for Defendants in Error.

527 FIFTH AVENUE, NEW YORK.

To

HON. JOAB H. BANTON,
District Attorney of New York County.
SAUL S. MYERS, ESQ.,
ARTHUR G. HAYS, ESQ.,
Attorneys for Trustees.

IN THE UNITED STATES SUPREME COURT.

OCTOBER TERM, 1921.

No. 874.

In the Matter of ELMORE D. DIER, HARRY J. LAWRENCE, JR., and LAWRENCE STARR, *Individually and as Copartners, Doing Business under the Firm Name of E. D. Dier & Co.*, and E. D. DIER & Co., *Alleged Bankrupts.*

STATE OF NEW YORK,
County of New York:

Nash Rockwood, being duly sworn, says:

I am a member of the firm of Rockwood & Lark, 527 Fifth Avenue, New York City, who are attorneys for defendants in error in the matter above entitled. This is an appeal by E. D. Dier and E. D. Dier & Co., bankrupts, from an order of the United States District Court, Southern District of New York, refusing their application for an injunction prohibiting the delivery of their records and books of account to the district attorney of the county of New York for use against them in the matter of procuring their indictment from a grand jury for the alleged commission of a criminal offense.

A petition in involuntary bankruptcy was heretofore filed against said E. D. Dier and E. D. Dier & Co., and the United States District Court, Southern District of New York, appointed a receiver *pendente*, and ordered the alleged bankrupts to deliver their books, papers, and records to the receiver. The receiver qualified and took possession of said books, records, and papers by virtue of the order appointing him and without any affirmative act on the part of said alleged bankrupts. Thereafter, while said documentary evidence was in the said possession of said receiver, the district

attorney of New York County served a subpœna upon the receiver requiring him to produce said documentary evidence to be used before a grand jury of New York County in the matter of procuring an indictment against the alleged bankrupts for alleged criminal offense. The alleged bankrupts thereupon petitioned the United States District Court for an order restraining said receiver from so turning over said documentary evidence upon the ground that the said use of the same would, in effect, make said bankrupts witnesses against themselves and would violate their constitutional rights. An order to show cause was granted, with a temporary restraining order, and the court subsequently denied the application for an injunction, stating, as one of the reasons therefor, in substance that when the receiver took possession of the said books, records, and papers of said bankrupts it constituted a legal waiver of their constitutional rights. The bankrupts thereupon filed assignments of error and prayed for leave to appeal to this court, which was granted. Appeal was thereupon perfected, bond given, and necessary cash deposit made with the clerk of this court for printing the record. The court has continued the temporary restraining order pending the determination of said appeal, and said stay will expire by limitation on Tuesday, May 16, 1922. Application is now made to advance the cause for argument in this court for the reason:

1. That an early determination of the questions of law involved is desired by all parties to the record herein—by the defendants in error because Judge Hand has stated to counsel upon oral argument that he will not continue the stay for an indefinite period, and by the district attorney of New York County because he has stated that he needs the

books and papers, if he is entitled to have them, for use in prospective criminal prosecutions.

WHEREFORE defendants in error respectfully request this court to advance this cause for argument at the present session of the court, to the end that there may be an early decision of the important questions involved.

NASH ROCKWOOD.

Subscribed and sworn to before me this 11th day of May, 1922.

CHARLOTTE EPSTEIN,
Notary Public.

N. Y. Co. Cl'k's No. 108. Reg. No. 4116.
Commission expires March 30, 1924.

[Endorsed:] 874—28829. United States Supreme Court. In the Matter of Elmore D. Dier, Harry J. Lawrence, Jr., and Lawrence Starr, *et al.*, alleged bankrupts, defendants in error. Original. Affidavit & notice of motion. Rockwood & Lark, Attorneys for defendants in error, office and post office address, 427 Fifth Avenue, Borough of Manhattan, New York, N. Y.

Due and personal service of affidavit and notice of motion is admitted this 11th day of May, 1922.

ARTHUR GARFIELD HAYS,
Atty. for Trustee.

Copy rec'd May 11, 1922.

JOAB H. BANTON,
Per J. BRESLIN.

Copy rec'd 5/11/22.

SAUL S. MYERS,
Atty. for Trustee.

SUPREME COURT OF THE U. S.

OCTOBER TERM, 1921.

No. 874.

In the Matter of ELMORE D. DIER ET ALS., *Appellants.*

DISTRICT OF COLUMBIA, *ss:*

Nash Rockwood, being duly sworn, says: I have read the affidavit of Assistant District Attorney John Caldwell Myers, verified May 12, 1922, in opposition hereto. There was no unnecessary or unusual delay either in perfecting the appeal herein or in the matter of having the record printed. The appeal was perfected on April 13, 1922, three days after the said appeal was allowed. The deposit of $85 with the clerk of this court for printing the record herein was made promptly. I am informed by said clerk that this court ceased hearing oral arguments after April 28, 1922, so that said cause could not have been orally argued at this term of the court. NASH ROCKWOOD.

Subscribed and sworn to before me this 10th day of May, 1922.

[SEAL.] C. ELMORE CROPLEY,
Notary Public, District of Columbia.